

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-4110**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES EDWARD HARDY, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle  
District of North Carolina, at Durham. James A. Beaty, Jr.,  
District Judge. (CR-02-263)

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Submitted: June 19, 2003

Decided: June 24, 2003

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Before NIEMEYER, KING, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Louis C. Allen, III, Federal Public Defender, William C. Ingram,  
Assistant Federal Public Defender, Greensboro, North Carolina, for  
Appellant. Anna Mills Wagoner, United States Attorney, Robert A.J.  
Lang, Assistant United States Attorney, Winston-Salem, North  
Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

James Edward Hardy, Jr., pled guilty to possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) (2000), and was sentenced to a term of sixty-five months imprisonment. On appeal, he challenges the four-level enhancement he received for using the firearm in connection with another felony offense, U.S. Sentencing Guidelines Manual § 2K2.1(b)(5) (2002), a fact not charged in the indictment. We affirm.

Hardy contends that, under Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), any fact that increases the sentencing guideline range must be charged in the indictment and proved beyond a reasonable doubt. However, Apprendi is not implicated when the sentencing court makes factual findings that increase the guideline range but the sentence does not exceed the statutory maximum. Harris v. United States, 536 U.S. 545 (2002). In this case, the statutory maximum was ten years. We note that, although Hardy raised the legal issue at sentencing, he did not contest the fact that he used the gun to shoot another person.

Because the issue raised here lacks merit, we affirm the sentence imposed by the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED